In the High Court of Punjab and Haryana at Chandigarh

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C.W.P. No.19920 of 2006

.....

Date of decision: 15.12.2006

Punjab State Electricity Board

.....Petitioner

v.

Presiding Officer, Labour Court, Amritsar and another

.....Respondents

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Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. G.S. Kanwar, Advocate for the petitioner.

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The petitioner Punjab State Electricity Board (`Board' – for short) by way of the present writ petition under Articles 226/227 of the Constitution of India seeks quashing of the order dated 17.5.2006 (Annexure-P.5) passed by the Presiding Officer, Labour Court, Amritsar (respondent No.1). In terms of the said order, the respondent No.2 workman has been held entitled to the scale of higher post for the period from 1.8.1993 to 17.12.1996 which has been computed at Rs.44,600/- @ Rs.1100/- per month.

The respondent No.2-workman was appointed as Oil Cleaner with the Board on 26.8.1988. Thereafter, on 31.7.1991 he was authorized to

work against the vacant post of Sub Station Attendant (`SSA' – for short) in his own pay scale of Oil Cleaner. He was then transferred from the post of Oil Cleaner on 6.7.1992 to work against the post of SSA in his own pay scale as Oil Cleaner. In terms of the Punjab State Electricity Board Technical Service Class-III Regulations, 1996 (`Regulations' – for short), 50% posts of SSAs are to be filled by promotion from amongst the Oil Cleaners. The remaining 50% are to be filled by direct recruitment. For promotion as SSA from amongst the Oil Cleaners, a minimum experience of working as Oil Cleaner for a period of five years is required. The promotion to the posts of SSAs is to be made on the basis of seniority-cum-merit. As per the seniority list, respondent No.2 workman was at serial No.3 in order of seniority and S/Shri Gurbax Singh and Tejinder Singh were above him at serial Nos.1 and 2. The respondent No.2 workman on 18.4.1994 submitted a representation to the effect that he had completed five years service as Oil Cleaner on 25.8.1993 and he may, therefore, be given the pay scale of SSA. The Superintending Engineer vide order 10.12.1996 after consideration of the matter promoted respondent No.2 as SSA at serial No.1. The claim of the two officials, who were senior to the respondent No.2, was ignored. While relinquishing charge on 18.12.1996, respondent No.2 in his charge relinquishing report (Annexure-P.1) had mentioned himself as Oil Cleaner. In the joining report submitted on 19.12.1996 (Annexure-P.2) respondent No.2 again stated that the order for his promotion from Oil Cleaner to SSA had been issued. According to the petitioner-Board the said communications show that respondent No.2 never claimed himself as SSA earlier and he had willingly worked against the post

of SSA while drawing the salary of Oil Cleaner. In the circumstances, it is submitted that respondent No.2-workman is estopped from claiming higher salary of SSA for the period from 1.8.1993 to 17.12.1996. However, respondent No.2 on 24.5.2000 filed an application before the Labour Court (respondent No.1) claiming that he was entitled to be paid higher salary as SSA from 1.8.1993 to 17.12.1996, even though as per his own statement (Annexure-P.3) he had completed requisite period of five years as Oil Cleaner on 25.8.1993. The petitioner-Board on receipt of notice from the Labour Court (respondent No.2) filed its written statement (Annexure-P.4). A preliminary objection was taken that the application under Section 33C (2) of the Industrial Disputes Act, 1947 (`Act' – for short) filed by respondent No.2 was not maintainable. The contents as submitted in the application in fact were a subject matter of dispute because prior to 18.12.1996 no order had been passed for regular promotion of respondent No.2 as SSA. Therefore, he was not entitled to the pay scale of the higher post of SSA. The claim for payment of higher salary as SSA from 1.8.1993 to 17.12.1996 was denied. The Labour Court vide its order dated 17.5.1996 (Annexure-P.5) accepted the claim of respondent No.2-workman and held that he was entitled to the pay scale of SSA for the period from 1.8.1993 to 17.12.1996 @ Rs.1100/- per month which can be computed as Rs.44,600/-. Accordingly, the application of respondent No.2 before the Labour Court was allowed, which is assailed by way of the present petition.

Learned counsel appearing for the petitioner-Board has submitted that there was dispute between the parties as regards the entitlement of respondent No.2 for the scale of SSA and that too from

1.8.1993. Therefore, the application under Section 33C (2) of the Act was not maintainable as the same is to be filed by way of execution of a pre-determined right or benefit i.e. an entitlement which has already been determined or adjudicated by the competent authority. Strong reliance is placed on State of U.P. and another v. Brijpal Singh, 2005 SCC (L&S) 1081 to contend that the procedure provided under Section 33C (2) of the Act is in the nature of execution and cannot be claimed in the absence of pre-determined right or entitlement.

We have given our thoughtful consideration to the contentions of the learned counsel appearing for the petitioner. It is not in dispute that respondent No.2-workman had been working as Oil Cleaner with the petitioner-Board since 26.8.1988 in the pay scale of Rs.830-1560. He completed requisite period of five years as Oil Cleaner on 25.8.1993 for being considered for promotion as SSA. This in fact is the stand of the petitioner-Board itself in the present petition. However, what the petitioner-Board states is that respondent No.2 has claimed the scale of SSA w.e.f. 1.8.1993. In other words it is submitted that the claim could be made only after 25.8.1993 and not from 1.8.1993. This aspect is hardly of any consequence as respondent No.2 had completed five years of service as Oil Cleaner in the month of August 1993. The petitioner-Board has submitted that as per the statement (Annexure-P.3) of respondent No.2 he had completed the requisite period of experience of five years on 25.8.1993. A perusal of the statement (Annexure-P.3) filed by respondent No.2 before the Labour Court (respondent No.1) shows that he had stated that the pay scale of SSA is Rs.1200-2200 which was liable to be given to him after

completion of service of five years as Oil Cleaner and that the time was completed on 30.7.1993. It is further stated that the petitioner-Board had not paid him this pay scale of Rs.1200-2200 w.e.f. 1.8.1993 and instead paid him from 18.12.1996. It is further stated by respondent No.2 that he had taken less salary @ Rs.1100/- per month from 1.8.1993 to 17.12.1996. It was, therefore, requested that he may be paid the balance amount less received by him along with bonus etc. with 18% interest. In the written statement (Annexure-P.4) filed by the petitioner-Board before the Labour court (respondent no.1), there is no specific denial to the fact that the petitioner completed five years of service as Oil Cleaner on 30.7.1993. The Labour Court (respondent no.1) has considered the matter by accepting the position that respondent no.2 completed five years of experience as Oil Cleaner to become eligible for promotion to the post of SSA on 30.7.1993. In the circumstances, the defect of respondent No.2 completing five years of service as Oil cleaner on 25.8.1993 and not on 30.7.1993 is inconsequential. Even otherwise respondent No.2 has made his claim for the less salary received by him from the beginning of the month in which he was promoted and the same has been adjudicated upon by the Labour Court (respondent No.1). Therefore, even if there is a defect in the claim of respondent No.2 for higher scale of SSA from 1.8.1993 instead of 26.8.1993, the same is not such a glaring one which would warrant interference in exercise of the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India. Even otherwise, it has not been shown by the petitioner-Board that the higher scale of SSA cannot be claimed from the beginning of the month in which respondent No.2 was promoted as such.

The stand of the petitioner-Board that respondent No.2 is not entitled for higher scale till he was regularly promoted on 18.12.1996 in the facts and circumstances of the case is not of much significance. Respondent No.2, as already noticed, has been working with the petitioner-Board as SSA since 31.7.1991 in his own pay scale as Oil Cleaner. He was even transferred from the post of Oil Cleaner on 6.7.1992 to work against the post of SSA in his own pay scale as Oil Cleaner. Therefore, respondent No.2 has been willing to work and in fact has been working as SSA even prior to the period he completed five years in service as Oil Cleaner. In Union of India v. K.V. Jankiraman, AIR 1991 SC 2010, it was held that the normal rule of `no work no pay' is not applicable to cases where the employee although is willing to work has been kept away from work by the authorities for no fault of his. Respondent No.2 was willing to work and had even worked as SSA. Therefore, his claim for the pay scale of SSA on completion of five years as Oil Cleaner has rightly been accepted by the Labour Court (respondent No.1).

The other contention that has been raised by the learned counsel for the petitioner-Board is with regard to the maintainability of the application under Section 33C (2) of the Act. This aspect was considered by the Labour Court. It was observed that the short point for consideration was whether the workman was entitled to the same salary and allowance that is difference of pay of Oil Cleaner and SSA for the relevant period as is admissible to a regular SSA for the period respondent No.2 had worked as such. It was admitted position before the Labour Court that in the exigency of shortage of SSA staff in some sub-stations of the petitioner-Board,

respondent No.2-workman along with others was engaged as SSA and he was transferred from 66 KV Sub-Station Beas to Jandiala. In such a situation to provide speedy remedy for executing his existing rights an application under Section 33C (2) of the Act was maintainable. Section 33C provides for recovery of money due from an employer. Sub-section (2) thereof reads as under:-

> "**33C. Recovery of money due from an employer.-** (1) xx xx
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> (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.
>
> Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

The provisions of the above section applies to cases where dispute is between a workman and the employer. The petitioner-Board does not dispute the stand that it is an `industry' under the Act. Therefore, in terms of Section 33C (2) of the Act, respondent No.2, who was a workman, could make an application for recovery of money due from his employer

and such an application cannot be said to be not maintainable. In State of U.P. v. Brijpal Singh (supra) referred to by the learned counsel for the petitioner, it was held that right to money or benefit which is sought to be executed under Section 33C (2) must be an existing one that is already adjudicated upon and must arise in the course and in relation to relationship between industrial worker and employer. It was held that the difference between a pre-existing right or benefit and one which is considered just and fair is vital and the Labour Court exercising the jurisdiction under Section 33C (2) is not competent to arrogate to itself functions of Industrial Tribunal and entertain a claim which is not based on an existing right but which may properly be made subject matter of an industrial dispute. In the present case, the right of entitlement of the workers to the scale of SSA from the date he has been discharging his duties as such after completion of five years as Oil Cleaner has not been disputed. Respondent No.2 has been working as SSA since 31.7.1991. However, he completed five years as Oil Cleaner on 25.8.1993. Respondent No.2 does not claim the scale of SSA for the period from 31.7.1991 to 31.7.1993 i.e. the period when he had not completed five years. He claims it from the period for which he worked as SSA after completion of five years as Oil Cleaner. The Labour Court (respondent No.1) having held respondent No.2 entitled to the scale of SSA from the date he had completed the requisite period of five years experience as Oil Cleaner and had even been working as SSA, would not warrant any interference of this Court in exercise of its supervisory writ jurisdiction. In the circumstances, there is no infirmity in the impugned order.

For the foregoing reasons, there is no merit in this petition and the same is accordingly dismissed.

(S.S. Nijjar)
Judge

December 15, 2006.

(S.S. Saron)
Judge

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Whether fit for indexing: Yes